



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/11436/2017

THE IMMIGRATION ACTS

Heard at: Field House
On 18 April 2018

Decision and Reasons Promulgated
On 19 April 2018

Before

Upper Tribunal Judge Gill

Between

A S
(ANONYMITY ORDER MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.

The parties at liberty to apply to discharge this order, with reasons.

Representation:

For the appellant: Mr J Gajjar, of Counsel, instructed by A2 Solicitors.

For the respondent: Mr P Nath, Senior Home Office Presenting Officer.

Decision and Directions

1. The appellant, a national of Iraq born on 23 June 1980, appeals against a decision of Judge of the First-tier Tribunal P S Aujla who, in a decision promulgated on 19

December 2017 following a hearing on 5 December 2017, dismissed his appeal, against a decision of the respondent of 24 October 2017 refusing his asylum claim.

2. The appellant had had a previous appeal. He had appealed against a decision of the respondent of 28 June 2005 which was dismissed by Immigration Judge Martin on asylum grounds and human rights grounds.
3. Judge Martin did not have evidence before her in support of the appellant's claim that his uncle and cousins had worked or collaborated with the US troops in Iraq.
4. In support of his appeal against the decision of 24 October 2017, the appellant submitted further evidence (the "new evidence"). This evidence is at pages 29, 32 and 37-50 of the appellant's bundle before Judge Aujla. This comprises of evidence which, in Mr Gajjar's submission, corroborated his claim that his uncle and cousins had worked or collaborated with US troops on Iraq.
5. The grounds contend that Judge Aujla had materially erred in law by failing to engage with the new evidence. In addition, Judge of the First-tier Tribunal Doyle, who granted permission to appeal, considered it arguable that Judge Aujla had materially erred in law by applying the country guidance in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) without recognising that the country guidance had been amended by the Court of Appeal in AA [2017] EWCA Civ 944.
6. At the commencement of the hearing, Mr Nath agreed that Judge Aujla had erred in law in failing to consider or engage with the new evidence at pages 32 and 37-50. He accepted that this was a material error of law.
7. I agree that the judge erred in law by failing to engage with the evidence at pages 32 and 37-50 of the appellant's bundle. Although the judge's decision was fairly lengthy, being 11 pages long (excluding the signature page), only one paragraph set out the judge's assessment of the subjective evidence that was before him, i.e. para 32. At para 32, he considered the document at para 29 and referred by page number only to the document at page 32 of the appellant's bundle. However, he did not engage with the evidence at page 32, nor did he engage with any of the evidence at pages 37-50.
8. I therefore have to decide whether to exercise my discretion to set aside the judge's decision. The new evidence included evidence that was relied upon to address one of the reasons given why Judge Martin in making her adverse credibility assessment. I am satisfied that it was evidence that was capable of persuading a judge from departing from the findings of Judge Martin.
9. In these circumstances, I have decided to set aside Judge Aujla's decision in its entirety, save that his record of the oral evidence at paras 23-26 shall stand and can be relied upon by both parties. For the convenience of the parties and the judge hearing the appeal at the next hearing, I shall now set out paras 23-26:
 - "23. The Appellant gave oral evidence at the hearing with the help of an Arabic interpreter. He confirmed at the beginning of his evidence that he fully understood the interpreter. His evidence may be summarised as follows. The Appellant confirmed his name and address and stated that his witness statement of 17 November 2017 was correct and he adopted the same as his evidence. He stated that he had no family left in Iraq. He had uncles living in the United States. He had two sisters. One was living in the United States and the other was living in Iraq but had now left the country. His mother had passed away.

24. The Appellant stated in cross-examination that he was not in contact with anyone in Iraq. He last had contact with his mother in 2014. His sister in the US told him their mother had passed away. His sister was in contact with his mother. His aunt in Iraq, with whom he had stayed before he came to United Kingdom, had told his sister that their mother had passed away. His aunt was still living in Iraq. It was the same aunt that he stayed with before he came to the United Kingdom. She was his mother's sister and was living in Al Muthanna, the suburb of Arrasalah. He was not in contact with his aunt. He did not have a strong relationship with her. He had stayed with her before he came to the United Kingdom. He had chosen not to keep in contact with her.
25. The Appellant was asked about what he had stated in paragraph 7 of his witness statement. He had stated that "Although I was not employed by the US troops, I was happy to help them distribute leaflets which was to oppose and destroy the Ba'ath party." The Appellant's attention was drawn to questions 41, 50 and 51 of the asylum interview where he had made no mention of leafleting when he was asked what he had done. It was put to him that he had not previously made any mention of leafleting. The Appellant had no credible explanation. The Appellant stated that his cousins had left for the United States in 2003, at the end of the year. He left Iraq in 2005. He could not relocate to another part of Iraq as militia were everywhere. Militia were in control. He could not go to a Sunni controlled area.
26. The Appellant stated in re-examination that he could not live with his aunt in Iraq. She had her own family. Her family would not accept him."
10. It is clear that Judge Aujla also erred in law in applying the country guidance of the Upper Tribunal in AA because that country guidance had been amended by the Court of Appeal in its judgment in AA. However, this does not affect my decision to set aside the decision of Judge Aujla on the basis that he erred in law in his assessment of credibility.
11. In the majority of cases, the Upper Tribunal when setting aside the decision will re-make the relevant decision itself. However, para 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:
- "(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."
12. In my judgment this case falls within para 7.2 (b). I am therefore of the view that a remittal to the First-tier Tribunal is the right course of action.

Notice of Decision

The decision of Judge of the First-tier Tribunal Aujla involved the making of errors on points of law such that the decision is set aside in its entirety. This case is remitted to the First-tier Tribunal for a hearing of the Article 8 claim outside the Immigration Rules by a judge other than Judge of the First-tier Tribunal Aujla.

Directions to the parties

- (1) The decision on the appeal awaits determination by a Judge of the First-tier Tribunal other than Judge Aujla. It is noted that the appellant requires an Arabic interpreter and that there will only be one witness at the hearing.
- (2) Within 21 days of the date on which this “Decision and Directions” is sent, the appellant must serve the following:
 - (i) In a paginated and fully indexed bundle, any evidence (including witness statements) that he wishes to rely upon which is not already contained in the appellant's 136-bundle submitted on the appellant's behalf before the First-tier Tribunal or in the respondent's bundle.

If any such evidence includes background material, any essential passages must be identified in a schedule or highlighted.
 - (ii) A skeleton argument.



Signed
Upper Tribunal Judge Gill

Date: 18 April 2018